



UNITED STATES DISTRICT COURT 978375
 NORTHERN DISTRICT OF INDIANA
 SOUTH BEND DIVISION

Judge Robert J. Miller

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CONSOLIDATED RAIL CORPORATION
 a/k/a CONRAIL,

Defendant and
 Third Party Plaintiff,

vs.

PENN CENTRAL CORPORATION, et al.,

Third Party Defendants.

CASE NO.:

S90-00056

The deposition of DAVID STOKELY

Date: Thursday, January 14, 1993

Time: 9:30 o'clock a.m.

Place: 205 West Jefferson Boulevard
 South Bend, Indiana

Called as a witness by the Plaintiff
 in accordance with the Federal Rules of Civil
 Procedure, pursuant to agreement as to date,
 time and place and notice duly served.

Before Teresa L. Gemmel
 Notary Public, State of Indiana

1 lost. If there was -- if the integrity of the tank
2 car was broken or something like that.

3 Q But if the consignee of the tank car alleged that
4 there was some material in the car and lost it,
5 that would come to you?

6 A Yes, that's right.

7 Q And you have not received any?

8 A No.

9 Q Claims for such as the GATX or GATX or DOWX or?

10 A No, I haven't.

11 MR. RUVOLO: Okay, no further questions.

12 MR. CUNNINGHAM: Just one. One more.

13 RECROSS EXAMINATION

14 BY MR. CUNNINGHAM:

15 Q In answer to Mr. Ruvolo's questions, as I recall,
16 you indicated the procedures are roughly the same
17 in claim prevention now as they were since you've
18 been there?

19 I want to make sure that's right.

20 A If the --

21 Q At least, you know of no differences, I guess?

22 A I don't know -- I'm not aware of any changes, no,
23 sir.

24 MR. CUNNINGHAM: All right. That's all
25 the questions I have.

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3 Environmental Enforcement Section
4 Environment and Natural Resources Division
5 United States Department of Justice
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8 For the Plaintiff;

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14 For the Defendant and Third Party Plaintiff;

15 MR. PIERCE E. CUNNINGHAM
16 Frost & Jacobs
17 2500 Central Trust Center
18 201 East Fifth Street
19 Cincinnati, OH 45202

20 and

21 MR. GLENN J. ROSSWURM, II
22 May, Oberfell & Lorber
23 300 North Michigan
24 South Bend, IN 46601

25 For the Third Party Defendant.

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I N D E X

THE DEPOSITION OF

DAVID STOKELY

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PLAINTIFF'S EXHIBIT NO.

MARKED

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1 DAVID STOKELY,
2 called as a witness by the Defendant, being
3 first duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. RUVOLO:

7 Q Would you please state your name, Mr. Stokely?

8 A David Stokely.

9 Q And your address?

10 A ████████████████████ (b) (6) ████████████████████

11 Q Okay. And a telephone number you could be reached
12 at?

13 A ████████████████████ (b) (6) ████████████████████

14 Q Okay. My name is Peter Ruvolo. I'm an attorney
15 with the Justice Department. We represent the
16 Environmental Protection Agency, and this is a
17 civil suit to recover money damages which has been
18 brought against Conrail, and there are others
19 involved.

20 MR. CUNNINGHAM: Minor players, but.

21 MR. RUVOLO: Minor players.

22 MR. ERMILIO: I object to that.

23 BY MR. RUVOLO:

24 Q We have you here to see if we can get some
25 information from you as to your operation -- your

1 job operation and Conrail in general.

2 If I ask you any question that you do not
3 understand or do not hear, please ask me to repeat
4 it and I will. If there's anything -- time you
5 want to take a break for any reason, let us know
6 and we'll be glad to comply with that.

7 You should answer every question I ask unless
8 it's objected to by your attorney and he directs
9 you not to answer. Okay?

10 A Yes.

11 Q And tell me a little bit about yourself. Where do
12 you live again?

13 I'm sorry.

14 A Elkhart, Indiana.

15 Q And how long have you lived there?

16 A I've lived there nine years now at that address.

17 Q At that address.

18 Prior to that you lived, as well, in Elkhart?

19 A I've lived in Elkhart since I was about 7 years
20 old.

21 Q So you're almost a native.

22 And how far do you live from the Conrail
23 yard?

24 A About five miles. Four to five miles one way.

25 Q Are there many other Conrail employees that live in

1 your area?

2 A Yes. I have a conductor and a retired yardmaster
3 living on my block, yes.

4 Q Okay. When did you -- well, let's start a little
5 bit about yourself.

6 Can you tell us about your education?

7 A Graduated from Elkhart High School in 1949, and I
8 attended a few college classes -- courses. I never
9 took any degree; never finished any years, of
10 course. Goshen College and IUSB, but just a few
11 courses on that.

12 Q And what did you do after you left school?

13 A Well, I continued working for New York Central. I
14 had hired out in the summer between my junior and
15 senior high school years, and I worked full-time
16 while I was -- during my senior year in high
17 school.

18 Q I see.

19 A And I -- I continued working there.

20 Q Just continued working.

21 What was your first position?

22 A Crew caller.

23 Q A what?

24 A A caller.

25 Q A caller?

1 A That's where we would wake the train crews and
2 engine crews up to go to work. I was 16 years old,
3 and that was my job then.

4 Q And how long did you retain that position?

5 A Two or three years later I -- that's called a Class
6 II position. Two or three years later I got a
7 Class I position, which was a yard clerk.

8 Q What were the functions of a yard clerk?

9 A Well, various. Handling the records for trains
10 in -- inbound and out in the yard office, and also
11 I was crew dispatcher at that time, and I've stayed
12 crew dispatcher for several years.

13 MR. CUNNINGHAM: Can we just pick up the
14 years, Peter?

15 MR. RUVOLO: Yeah, we'll pick up the
16 years.

17 Q When was this about?

18 MR. CUNNINGHAM: Graduated from Elkhart
19 when?

20 THE WITNESS: 1949.

21 MR. CUNNINGHAM: Go ahead.

22 A Should I continue?

23 Q Yes.

24 And then you say you worked the last two
25 years you were working at Conrail?

1 A I started working in 1948, summer of '48.

2 Q '48, all right.

3 And as?

4 A As a caller.

5 Q As a caller.

6 A And I -- I was working through machinery, and 1950
7 and '51 I became a Class I clerk.

8 Q Okay.

9 A And crews dispatcher. And then a couple years
10 later, about 1953, I started working extra
11 stationmaster. And then a short while I was
12 regularly assigned stationmaster for about five
13 years.

14 Q And this is all for New York Central. Is that
15 correct?

16 A Yes, New York Central.

17 Q Okay. Please continue.

18 A And in 1958, due to the reduction in passenger
19 business, the stationmaster's jobs were -- were --
20 some were taken off; and I worked part-time
21 stationmaster for the next five years, until 1963,
22 all the while working regular yard clerk or crew
23 dispatcher.

24 Q And what were the functions of the stationmaster?

25 A Well, another name for stationmaster is depot

1 yardmaster and in charge of the passenger trains
2 arriving and departing the depot and facilities and
3 the crews and employees there.

4 Q Okay. And after stationmaster?

5 A Okay. The last I worked -- that was 1963, and from
6 then on for the next about eight years or so,
7 various yard clerk jobs, crew dispatcher. I was
8 cashier at the freight office for a year or so.
9 And about 1972 I became chief clerk at the yard
10 office, and I worked that for about eight years.

11 Q But at that point it was now owned by Conrail. Is
12 that correct?

13 A No, Penn Central --

14 Q I'm sorry. Penn Central?

15 A (Continuing) -- started in 1968, I think.

16 Q All right.

17 And then Conrail came in?

18 A Conrail came in in 1978.

19 Q '78.

20 A So during my tour as a chief clerk is when Conrail
21 started then.

22 Q And what were your responsibilities as chief clerk?

23 A Well, in charge of the clerical help at the hump
24 office, and I would weigh cars and just help the
25 general operation of the yard office there.

1 Q Did you -- was part of your function to make out
2 any reports of any incidents that may have occurred
3 on the property?

4 A No, I think anything like that would have been done
5 by someone above me, a trainmaster or something
6 like that probably or -- or yard supervisor, some.

7 Q All right. Suppose at that time -- now, let's
8 confine it to that time. We're talking in the mid
9 70's and that period of time or even prior to that,
10 if you know.

11 Suppose an incident occurred on the -- in the
12 humping process, such as a derailment or sideswipe
13 or something. What would be the procedure?

14 MR. ERMILIO: The procedure for -- for
15 what?

16 BY MR. RUVOLO:

17 Q For -- for taking care of anything. Anything as
18 far as you were concerned as far as you went -- as
19 went on at the yard at the time?

20 A Well, of course, I'm a non-operating employee.
21 My -- my interest there would be in the records, in
22 seeing what was -- what car, maybe, was damaged or
23 something and see that it was shown in the proper
24 status, in a bad order status or something like
25 that, see.

1 And, of course, any -- that -- that was
2 my main interest. My interest was not in
3 correcting -- actually correcting the incident.

4 Q I see.

5 So you were interested in filing -- making
6 sure the report was filed and that you got a copy
7 of the report and then it was processed up --

8 A Yes.

9 Q (Continuing) -- as far as notifying the owner or
10 something of that nature. Is that correct?

11 A That's correct.

12 Q And then after Conrail took over, say in 1978, what
13 was your function?

14 A There was no difference. I stayed chief clerk
15 until about 1980; and at that time I became a
16 freight damage inspector, which my interest was
17 damage to lading being hauled by the railroad,
18 either inspecting or making reports on damage.

19 Q When you say damage, damage to property? Damage to
20 cars?

21 A To the --

22 Q What do you mean?

23 A Loads being hauled by the railroads, not property
24 outside -- off the railroad. Paper products or
25 lumber or coal. Loss in damage. I would say coal,

1 crushed stone, anything that's being hauled.

2 Q And how about cars that came in empty, for example,
3 that might have been in a derailment or might have
4 been damaged or something?

5 A Normally, if I would discover something was empty,
6 I would leave it be. My interest would end there
7 if there's no lading.

8 Q So you were only -- if for any products that may
9 have been contained on these cars or in these cars
10 was your responsibility?

11 A Not my responsibility, no, sir.

12 Q But that's what you were interested in?

13 A Yes.

14 Q And for the process to -- strike that.

15 For the purpose of evaluating the claim?

16 Would a claim be made by the owner of the
17 car, for example, or the shipper?

18 A Normally by the consignee. The consignee would
19 receive a carload of some kind of merchandise,
20 either damaged or lost. That person would make the
21 claim. But before he'd make the claim, I would
22 make an inspection; and I'd verify the loss or
23 damage, verify it. I'd make a report, and then the
24 consignee would make a claim and include a copy of
25 my report.

1 Q And you did this through what period?

2 A Only for a couple of years there, and then I went
3 back up to the hump office and worked various jobs
4 there, Stations Department.

5 Q About when are we talking now?

6 A About 1982 or 1983 I think it was, and then I
7 worked chief clerk again. And in 1984 I went to
8 the Materials Department, Material Management
9 Department, in which it has to be -- do with
10 ordering and dispersing of materials. 1984 that
11 was.

12 Q When you say ordering and dispersing materials, you
13 mean for the -- for the use in the yard?

14 A Use in the yard. Mostly for the Car Department.

15 Q Okay.

16 A Incidentally, for other departments too, but the
17 Car Department was the -- was the major customer of
18 mine.

19 Q And what kind of products would you order or
20 distribute in the Car?

21 A Anything from wheels, parts to repair parts for car
22 repair, steel, fuel for the engine house, fuel and
23 oil and small items, welding gloves; everything
24 that the Car Department and others might use too.

25 Q Now, these would be cars that were damaged either

1 someplace in the yard, or had they -- had already
2 come into the yard and?

3 MR. ERMILIO: I'm sorry.

4 Which -- which cars are you talking
5 about?

6 MR. RUVOLO: The parts that he's -- that
7 he's -- that he's ordering parts for.

8 MR. ERMILIO: Well, ordering parts for.
9 I'm sorry.

10 A There's no restriction on -- the cars might be
11 damaged somewhere else and brought into the yard,
12 or it might be damaged somewhere else and the
13 Elkhart people would go to this outlying place and
14 repair -- make repairs, see. There's no
15 restriction that I know of, that I'm aware of.

16 Q In -- let's try to pinpoint a year just for the
17 sake of discussion. Say in 1980, you still had
18 that position, correct?

19 A Now, which position?

20 Q Working, ordering, distributing parts for them?

21 A I started in 1984.

22 Q '84, okay.

23 Take your first year in '84. In the course
24 of a month or two, how many cars would be damaged
25 enough that they would require repair, on the

1 average?

2 A I'd have to guess. It would really be a guess on
3 that one.

4 Q Well, as I understand it, there are thousands of
5 cars that come through that yard over --

6 A Yeah.

7 Q (Continuing) -- a period of a day, actually.
8 Correct?

9 Sometimes -- something like 2 or 3,000 --

10 A Yes.

11 Q (Continuing) -- cars a day?

12 A Yes. I might -- I didn't see the -- the figures of
13 how many cars are repaired never reached me, and
14 I'd have to make a guess. It might be several
15 dozen a day, and I don't know. That might be way
16 off too.

17 Q From just your general knowledge of working in the
18 yard, what would be the general -- what would be
19 the usual course of a car being damaged?

20 Rate them, you know, one way or another.

21 A An example of a --

22 Q Yeah.

23 A Well, a common thing is the -- the air brakes for
24 some reason weren't working, and the car would be
25 battered to repair the air brakes. That would be

one common reason. Another common reason would be a car would be derailed, not a major; but a wheel would slip off the track maybe. Stays upright, but the wheel's off the track, and that might damage the journal; damage the -- and they'd have to put a new set of wheels on there.

Q What would cause something like that, a minor derailment? What could cause it?

A Sometimes during humping operations the drawbars are slewed sideways, and a slewed drawbar will put a sideways pressure on a car and bump it off the track. That's not too unusual.

Q Okay.

A And normally those cars stay upright when that happens.

Q All right. Continue. Other -- other causes?

A Okay, a hot box. A hot box is a problem. A hot box, which is an overheated journal, and they need a new set of wheels when that happens too.

Q Why would they need wheels?

A Well, at the end of the axle it's real nice and shiney and polished, and that's the actual weight bearing part of the car, and it screws in the journal box. And in a hot box, the oil and the waste catch fire at the end of it and dries out;

1 and then the journal starts to overheat; and the
2 end of the axle overheats; and it starts to cut.
3 And, in fact, it'll -- it'll melt if it goes long
4 enough. But that's not useable then. You've got
5 to replace the wheel when that happens.

6 Q Another example?

7 A Well, sometimes the cars are -- sometimes two cars
8 try to take the same route, and the track comes
9 together, and they bump into each other. That will
10 damage a car, and they have to be repaired.

11 Q And why would that happen, I mean, that they try to
12 take the same route?

13 Is it because one slipped or one was released
14 too soon or what?

15 A One thing might be human error, and another thing
16 I've seen might be switch failure, and I suspect
17 something else happens. I don't know. I've heard
18 of in years past maybe ice causing a problem there.
19 There's any of a number of reasons.

20 Q Okay. Now, what would happen -- the car would be
21 brought in for -- for repairs as needed, I take it.

22 What about the cause of the incident? Who
23 is -- whose responsibility would it be to correct
24 that if it was a switch or if it was --

25 A That would be someone in the Car Department that

1 would have to -- and I am not -- I was never
2 involved with that, finding the cause.

3 Q How about the retarders? Were you involved with
4 the retarders?

5 A The retarders?

6 Q Uh huh.

7 A I've never been involved with it. I've seen them
8 work.

9 Q You never had any dealings with -- with the
10 retarders, themselves?

11 A No, that's a different --

12 Q Per se?

13 A (Continuing) -- a totally different department
14 than I am now. That's what they call the C & S
15 Department, communication and signals, take care of
16 the retarders.

17 Q So the damaged car would then be brought into the
18 car barn for repairs?

19 A Uh huh.

20 Q And after the repairs were made, it would be
21 shipped on its way?

22 A That's the normal procedure.

23 Q Normal procedure?

24 A Yes.

25 Q And at what point would the consignee, for example,

1 make a claim with you?

2 Would you notify him that he's lost some
3 cargo?

4 A I wouldn't, no. I would -- I would -- if I saw a
5 cargo loss, I would notify my supervisor.

6 Q Okay.

7 A And from then on it's out of my hands. I don't
8 know what he does with it.

9 Q Then it's up to the supervisor to notify whoever
10 he's supposed to notify regarding the loss?

11 A Yeah, that's -- myself, I don't notify the
12 consignee to inspect the loss.

13 Q In addition to the parts that you would order and
14 distribute for the car barn, how about supplies?
15 You mentioned fuel oil?

16 A Uh huh.

17 Q I take it lubrication oil would be used?

18 A And motor oil for the engines.

19 Q The motor oil.

20 Are the -- would the engines be electrical as
21 well as diesel in some instances?

22 A No, they're all diesel electric.

23 Q Okay.

24 A They run -- they run on diesel engines, and the
25 engines run a generator. They're all diesel

1 electric.

2 Q Now, while it's being serviced, would any of these
3 parts be cleaned?

4 A Cleaned?

5 Q Yeah.

6 A I would assume. I would assume they'd be cleaned.
7 That's done at the engine house, and I've never
8 worked there at the engine house. I -- I can only
9 assume that they clean things there.

10 Q But not in the -- not in the barn, itself?

11 A Not -- I work near the Car Department, the repair
12 yard, which is a mile or so from the engine house;
13 and I've never spent time at the engine house.

14 Q Okay. Following '84 you took over this position.
15 What have you been doing since '84?

16 A Well, '84 I was chief clerk at the Materials
17 Department; and then in January of '89 I got my
18 present position, which is freight damage
19 inspector.

20 Q So this is '89, you said?

21 A January, '89, yes.

22 Q Okay. Tell me about freight damage inspector?

23 A Well, my job is to -- the department is called
24 Damage Prevention, so my job is to actually prevent
25 damage.

1 Q All right.

2 A But, a good part of the duties is to verify damage.
3 If someone gets a carload of material and it's --
4 there's loss or damage, I wait for them to -- to
5 make a call and say they have suffered a loss or
6 damage. Then I would verify the damage; try to
7 find the cause and make a report out.

8 Q Okay. Who would the report go to?

9 A The original would go to my -- my supervisor, Al
10 Weber, in Indianapolis.

11 Q Okay. Anybody else get copies of that report?

12 A Normally, no. I keep a copy. There's no
13 requirement for me to keep copies. I keep them for
14 a year, year and a half, until I need space; and
15 then I throw them out. My copies, I throw them
16 out.

17 Q You keep the copies at home or in your office?

18 A In our office -- at the office, yes.

19 Q In your experience as freight damage claim
20 inspector, have there been incidents where cars
21 allegedly "empty" arriving in the yard were found
22 to contain cargo of one form or another and a claim
23 subsequently made?

24 MR. ERMILIO: Can you rephrase that?

25 I don't understand that.

1 A Cars that were --

2 MR. ERMILIO: Do you understand?

3 A (Continuing) -- moving as empties?

4 Q Uh huh.

5 A Discovered to be loaded?

6 Q Loaded or half loaded or something.

7 A I have -- I have heard of that, yes. Yes.

8 Q And then claims would subsequently be made?

9 A Not necessarily a claim. The person that should
10 have had the material quite often is unaware that
11 they've left material in the car.

12 Q In other words, it may not have been completely
13 emptied at its last stop or drop-off point?

14 A Yes. That's --

15 Q So it it still contains something?

16 A That's -- consignee had been surprised when they're
17 notified that, "You left some stuff in this car."
18 That's been the -- that's been the usual response
19 that I've found.

20 Q I've read some reports that were supplied to us by
21 Conrail, and there are several instances where it
22 involves an "empty" car. Report says empty car is
23 leaking or venting or something of that nature so
24 that is not a rarity as far as you're concerned?
25 That happens on occasion?

1 A I don't know.

2 Q In your experience?

3 A I've heard of -- it would not be the first time
4 I've heard of it, but I haven't heard of it many
5 times. Maybe it's not a rarity, but it's a
6 scarcity. It's -- it's not usual.

7 Q Prior to coming here today, were you familiar with
8 this -- this suit that we have going here, this
9 little action?

10 A No, I -- prior to -- oh, but Jim called me.

11 Q Yeah, I know.

12 A But --

13 Q But you never read about any of it in the
14 newspaper, on the radio or?

15 A I know there's a problem with groundwater in
16 Elkhart.

17 Q Does it affect you where you live, by any chance?

18 A No, I'm on the opposite end of town.

19 And there have been EPA people out. They
20 have sunk wells all over the area, and they come
21 and test the wells every now and then. But I
22 haven't -- I've never been able to find out what
23 they discovered or what they find out, or I've
24 never seen any reports on that.

25 Q Okay. Nothing inhouse, such as a newsletter, some

1 kind of mail?

2 A I don't recall it, no.

3 Q Okay.

4 A I think I was told once to cooperate with these
5 people. If the EPA people come around, cooperate
6 with them, give them what they want. But it's been
7 a mystery to me what they're doing.

8 Q No comment.

9 MR. CUNNINGHAM: That's -- off the
10 record.

11 (Discussion held off the record.)

12 BY MR. RUVOLO:

13 Q Before coming here today were you notified that you
14 were requested to bring any documents that you
15 might have in your control?

16 A Yes, yes.

17 Q Do you have any, or did you bring any with you?

18 A I found -- I went back through my records, which I
19 only keep for, I say, less than two years, maybe a
20 year or so. I found three incidents concerning
21 hazardous -- what I would call hazardous materials.

22 Now, do you want me to --

23 Q Yeah, if I may just --

24 MR. ERMILIO: Excuse me. Off the record
25 for a second.

(Discussion held off the record.)

BY MR. RUVOLO:

Q Just so we clear the record a little bit, these are copies of reports that you, yourself, made. Is that correct?

A Not necessarily. No, these are my file copies, which maybe I never made a report out even.

Q Okay.

A Maybe I saw an incident, and I make copies of -- of the information and then file them and keep them in case I was questioned about them or in case a question came up.

Q I see. Okay.

Were these part of your official duties, or are these records that you decided that you better know the information just in case a claim came up later?

A Well, part of my duties is to keep your eyes open and notice what's going on, and this is -- these are some things that I noticed here.

MR. RUVOLO: Okay. Could we have these marked for identification?

THE WITNESS: Just a minute. These are the same thing here (Indicating).

MR. ERMILIO: Yes, there are two sets.

1 MR. CUNNINGHAM: Yeah, one for Penn
2 Central and one for Conrail.

3 MR. RUVOLO: Okay, thank you.

4 MR. ERMILIO: We're going to want one
5 for exhibits in the deposition.

6 (Plaintiff's Deposition Exhibit Nos. 1
7 through 4 marked for identification.)

8 BY MR. RUVOLO:

9 Q All right. Just to be clear, the -- the exhibits
10 marked 1, 2 and 3 were reports that we discussed
11 previously that you were aware of of incidents and
12 took care of the reports so that you would have a
13 record of in case there were claims made?

14 A Yes.

15 Q And Exhibit 4, if you can see, is a map of the
16 Conrail facility, and ask you just to take a look
17 at it, familiarize yourself with it. I don't want
18 to surprise you or anything.

19 Going back for one second, you've been
20 with -- you've been at the yard for a long time.

21 Other than modernization that may have taken
22 place, have there been any major structural changes
23 made in the yard?

24 A Structural changes?

25 Q Yeah. In other words, extra tracks added or new

1 buildings erected?

2 A I'm not sure of this bottom part of the yard. A
3 few years ago --

4 Q Which is the southern portion.

5 A Two tracks were added, and the road was relocated.
6 I don't know what the date of this map is. This
7 that I'm pointing to is the "W" yard. It
8 originally had five tracks; and a couple of years
9 ago, several, maybe six or seven years ago, two
10 more tracks were added and made it seven.

11 I can't tell if there's seven tracks there or
12 not.

13 Q Other than that?

14 A That's one change.

15 Q Will you just take this pen and just draw a line
16 where -- just in the general area where the tracks
17 were added?

18 A Well, okay. Parallel to here, and the road was
19 relocated (Indicating).

20 Q And that would have been approximately when?

21 A Probably within the past ten years, but I don't
22 know.

23 Q Okay.

24 A There have been minor changes with switches and
25 things, but nothing -- nothing major that I'm aware

1 of.

2 Let me see here a minute.

3 I think this -- I think this map is fairly
4 current. The south tour was added when a
5 renovation was made, and the tracks were stretched
6 some years ago. South tour was here, so I think
7 this is a fairly current map (Indicating).

8 Q Okay. When you say a few years ago, approximately?

9 A Within the past eight or ten years.

10 Q Would you just put a -- a number like "1" with a
11 circle next to that?

12 That's the south tour.

13 A There.

14 Q Okay. But the hump tower -- humping tour was
15 always where it is?

16 A Yes.

17 Q Approximately, and the retarder tower?

18 A I don't know of any other major changes.

19 Q Okay.

20 Turning to the report marked No. 1, could you
21 tell us what that refers to?

22 A Okay, first every morning we -- might pull a
23 unusual -- report of unusual occurrences to see if
24 there's any derailments or accidents nearby that
25 might have cars that are damaged that I would want

1 to go look at.

2 If -- if there's a loss or damage locally, I
3 look at -- I try to look at them before they get to
4 the companies, before they get to the customer.
5 And this is an Unusual Occurrence Report for
6 December 19, 1992, in which six cars were derailed
7 while a train was being humped.

8 And I -- I pulled the report, and I saw
9 the -- this is -- the top part of Page 1 is the
10 report, and below that and the next several pages
11 are records of the cars involved.

12 The first car that I have a record of is an
13 ADMX 25218, and I see it's an empty tank car, and I
14 believe it last contained corn oil. That's the
15 first one.

16 The second car was an ACFX 73829, a loaded
17 tank car with a hazardous commodity in it.

18 Q And what was the commodity?

19 A And as I -- that hazardous commodity was
20 naphthalene or tar camphor, crude tar camphor. It
21 has a hazardous commodity code.

22 The third car was a UTLX 47110, a loaded tank
23 car with waste oil for reclaiming.

24 And the fourth was an ACFX 73854. In fact,
25 the fourth, fifth and sixth cars all had the

1 naphthalene, ACFX 73854, 73843 and 73829.

2 So there were four cars involved that had --
3 had a hazardous commodity in them, and I found the
4 cars on Track 69 in the class yard where the
5 derailment had happened.

6 Q Excuse me.

7 We are on the report that shows the nature of
8 the hazardous material. I see -- I see a marking
9 as dangerous but.

10 A Page 3, over to the right is "STCC." That's a
11 stick code, which is a commodity code, and the top
12 one has a commodity code of 4940360.

13 Q All right.

14 A Any commodity code that starts with 49 is
15 hazardous.

16 Q Okay.

17 A Just the -- the 49 tells me it's something
18 hazardous. Then I can put that car number in and
19 ask for a hazardous report.

20 Q Report, okay.

21 A In which the following page there's a hazardous
22 commodity description of the material in ACFX
23 73829, and it gives a description of it here. This
24 is this page here again (Indicating).

25 Q Okay. And that will describe what the material is,

1 how it should be handled, what precautions should
2 be taken?

3 A Protection, environmental consideration and so on.

4 Q Okay.

5 A But I put that in so I know what I'm dealing with.

6 Q Okay. And if necessary, you call the proper person
7 or?

8 A Yes.

9 Q For removal, et cetera.

10 A But then I went -- I went down to Track 69 and
11 looked at these cars, took photographs of them, and
12 I found all of the cars upright. The rail had
13 turned, and the cars were upright with merely some
14 wheels off the track on the ground.

15 Q And in reference to Exhibit 4, just the map again,
16 could you tell us where this derailment took place,
17 or can you mark it with a circle and put a No. 2?

18 A Okay.

19 Q Just the general area, yeah.

20 And that's Track 69?

21 A How's that?

22 That's Track 69 in the class yard.

23 Q Okay, thank you.

24 Okay. And I see the photos.

25 You have the actual photos with you?

1 A I have two -- I've got a surplus of photos. Here's
2 two originals, and the rest are Xerox copies of
3 photos.

4 Q Now, were these photos taken after the car had been
5 put back on the track, or this is while it's
6 still --

7 A No, they -- the Car Department had showed up, and
8 they were looking it over and preparing to rerail.
9 They had to rerail them and fix -- actually turn
10 the rail back. The rail had turned over. And
11 rerailing had not begun.

12 Q Does the turnover of the rail appear in this second
13 photograph?

14 A No.

15 Q This 69-C?

16 A This is looking from the derailed cars back toward
17 where the cars came from.

18 Q I see.

19 A Before this incident, the tracks were straight.

20 Q Okay.

21 A And you can see the track has got a kink in it
22 there, and that's -- and along here is a furrow
23 caused by the wheels on the ties.

24 This is looking away from the derailment.

25 Q Is this an unusual situation for the kink in the

1 rail?

2 A Yes, that's -- to me it's unusual.

3 Q And what would cause it? An overheavy or
4 overburdened load or something?

5 A I think the cause -- I think the cause as given
6 here was the couplers were passed. Instead of
7 coming together, they pass. They -- one is slewed
8 this way, and one this way, and they come in at an
9 angle, and it makes a -- makes a -- pushes the car
10 sideways.

11 Q Okay.

12 A And in this case it also bent -- it kinked the
13 track.

14 Q Okay. And that would cause it to --

15 A Derail.

16 Q (Continuing) -- derail. Gotcha.

17 All right. Looking at the top photo which
18 shows the tank car itself, which is identified as
19 ADMX 25789; if you notice on the top of the car you
20 see these -- what I would call drippings of some
21 sort along the top.

22 Would that be just dirt or grease or
23 something upon the filling of the tank or -- in
24 your opinion?

25 A In my opinion, that's a part of the fixture of the

1 car. These discolorations are evenly spaced like
2 it's -- like it's a mechanical part of the car
3 maybe, but. That's what it looks like to me, like
4 it's part of the structure of the car perhaps.
5 They're very evenly spaced.

6 Q I have been out to the yard, myself, and I have
7 seen many tank cars that seem to have -- for lack
8 of a better word -- grease or drippings coming off
9 from around the top of the tank and running down
10 the sides and lots of soot or oil. Is that a
11 normal situation?

12 A It's unusual to me. It's -- I wouldn't call it
13 normal.

14 Q But these tank cars are not -- are constantly used;
15 are they not?

16 They're not -- they're not cleaned every time
17 they come into the yard or anything?

18 A No. No, we don't have a cleaning facility.

19 Q Okay. Continuing on after the hazardous materials
20 section, those are reports of the other cars. Is
21 that correct?

22 Oh, no, they have dangerous material, 49 as
23 well so -- okay. And the next page following --
24 okay.

25 Now, does that give you the information of

1 not only what was in the tank but its capacity?

2 I'm looking more towards the bottom of the
3 page.

4 A Not -- not the capacity here, no, sir. It tells
5 what's in the car, but I don't see the capacity.

6 Q All right. And what is the -- the information on
7 the -- on the -- start from the top and just run me
8 through it.

9 A Okay, the top is the car number and the billing
10 date and the origin information and destination
11 information, routing. Then down -- it goes on
12 down. There's the stick code, the commodity code,
13 followed by a description of the contents.

14 This was one tank of hazardous material,
15 naphthalene, and various information that I don't
16 use so I don't know what that is.

17 Q The contract number and emergency call number?

18 A Yeah. Okay, yeah.

19 Q The next page?

20 A That's a tank car of waste oil for reclaim from
21 Mc Cook, Illinois. The format's the same. See,
22 it's waste oil for reclaim from Juniata Locomotive
23 Shop in Altoona and to go to Oil Refining Company
24 at Mc Cook, Illinois.

25 Q And these are other photos of the tank car that was

1 involved or the tank cars that were involved?

2 A Yes, that's right.

3 Q Okay. Exhibit 2, which is ammonia, I take it?

4 A Okay.

5 Q Since you --

6 A This was --

7 Q Put it right on the front page?

8 A On August 12, 1992, I got a call that a trailer on
9 a flatcar was buckled, the trailer buckled, and I
10 should go look at it, so I did. And it was just a
11 few miles outside the rail -- outside of the
12 Elkhart Yard in a little town, Osceola.

13 And I discovered a flatcar with two trailers
14 on it. One trailer was buckled. I took
15 photographs, which are in the back of the file
16 here, and I ran -- I tried to find out what I could
17 on the computer, ran a description of it and pulled
18 a Way Bill, and it was a -- of the trailer that was
19 buckled. And the Way Bill told me it was a load of
20 ammonia bicarbonate, which did not have a hazardous
21 stick.

22 Q When you say "stick" --

23 A Commodity code. Did not have a hazardous commodity
24 code, and my interest was in seeing if there was
25 anything damaged.

1 Q When it does not -- excuse me for interrupting.

2 When it does not have a commodity code on it,
3 what does that tell you?

4 Why does that alert you?

5 A Well, it was not being shipped as a dangerous -- as
6 a dangerous commodity.

7 Q And it should have been?

8 A I don't know -- I don't know that.

9 Q Okay.

10 A I don't know that.

11 But it came from Church & Dwight, Syracuse,
12 New York, going to a company in Chicago -- no,
13 going to Salt Lake City; but the trailer could not
14 continue as it was. We couldn't send it on, and
15 then we had to have the load transferred to a
16 different trailer.

17 Brought the car into the Elkhart repair yard
18 and opened it, and which I have photographs here.
19 And when they opened it, there was a strong odor of
20 ammonia. And I looked at the description on the
21 side of the drums, and it said it breaks down to
22 ammonia, CO2 and water. And there was a concern
23 that it might be hazardous to someone transferring
24 the load because of the strong smell of ammonia.

25 Q I follow.

1 As a practical matter, nobody at Conrail --
2 and I'm not suggesting they should -- goes and
3 inspects what's in every car. You rely on the
4 identification that comes from the shipper. Is
5 that correct?

6 A Normally, yes. Yes, that's right.

7 Q And unless there's been an incident of something
8 that you have to go in, you would take the word of
9 the shipper that --

10 A Yes.

11 Q (Continuing) -- what's in the car is in the car?
12 What they say is in the car is in the car?

13 A Normally, that's correct, yes.

14 Q Now, in your experience, do you know of other
15 incidents where, for example, the shipper did not
16 put the proper identification on the car?

17 MR. ERMILIO: Objection. He didn't say
18 that the shipper in this situation did put an
19 improper designation on the car.

20 MR. RUVOLO: Well, maybe I'm --

21 MR. ERMILIO: If I understand it.

22 BY MR. RUVOLO:

23 Q Let's go back a little bit.

24 You said there was no code?

25 A There is a code.

1 Q For hazardous material?

2 A It's -- it's billed as ammonia bicarbonate; and it
3 was, in fact, ammonia bicarbonate.

4 Q Oh, I see.

5 A But the ammonia bicarbonate did not have a
6 hazardous commodity code.

7 Q Okay.

8 A It's only that I --

9 Q And where would it -- where would that code show if
10 it had one?

11 A On the bill here it would start with the 49 instead
12 of a -- in this case a 46.

13 Q All right.

14 A But, second, I asked for a hazardous report on this
15 car; and at the very top of the first page was my
16 reply when I asked for a hazardous -- I questioned,
17 and the reply was, "Does not have a hazardous
18 material stick."

19 Commodity description for a stick, 4611110
20 is -- and there's a -- there's a -- I don't know
21 what that says. It's an abbreviation there.

22 Q "AL?"

23 A "AL freight route" -- I don't understand the
24 description there.

25 Q Okay. And it says, "Not a hazardous commodity,

1 stick code."

2 A Yeah.

3 Q Well, is it or isn't it is my question?

4 A I don't -- I can't say, but I have a bottle of
5 ammonia at home, and I don't consider that
6 hazardous for my use, and I -- I don't like -- I'm
7 not qualified -- I'm not qualified to say.

8 Q It could be hazardous for any number of reasons,
9 flammable or something of that nature?

10 MR. ERMILIO: I'm going to have to
11 object to this question, "Is it or isn't it
12 hazardous?"

13 You've asked him questions about whether
14 there was --

15 MR. RUVOLO: Yeah, whether --

16 MR. ERMILIO: (Continuing) -- whether
17 it was shipped and labeled properly and
18 whether the ammonia bicarbonate had a
19 hazardous material stick code. He's answered
20 all those questions.

21 Are you asking him for his understanding
22 of what is hazardous? What is a hazardous
23 material?

24 MR. RUVOLO: Just his own personal
25 understanding.

1 MR. ERMILIO: His own personal
2 understanding?

3 MR. RUVOLO: Yes.

4 MR. ERMILIO: Okay.

5 Q Okay, let's go on to Number 3.

6 Oh, by the way, do you know -- could you mark
7 on the map here where that incident occurred?

8 A Off the map.

9 Q All right. You mean it's -- it's --

10 A Off there somewhere.

11 Q Put a number "3" in. Draw a line up here, if you
12 will, please, and put a 3. Okay. Okay.

13 A It's up in there somewhere (Indicating).

14 MR. ERMILIO: You're saying it was not
15 at this location, but it was off somewhere?

16 THE WITNESS: It's maybe a mile off the
17 end of the -- it would be off the paper
18 really here (Indicating). Maybe less than a
19 mile.

20 BY MR. RUVOLO:

21 Q Okay, and we're at the other report.

22 A Okay, this is the third one. Let me think here.

23 Okay, on the back page of this is an Unusual
24 Occurrences Report of a derailment on December 28,
25 1991, where four cars were derailed during humping

1 operations; and my first concern was was there any
2 loss, loss or damage, to the lading of any of these
3 cars. And I pulled the records of all the cars
4 involved, and I found two cars that I wanted to pay
5 attention to. One was a covered hopper load of
6 silica sand, and the other was an empty tank car
7 that last contained hydrochloric acid.

8 I found nothing unusual on the tank car. It
9 was nothing that alarmed me, nothing to indicate
10 any kind of a loss or a spill or anything.

11 Q There was no venting? There was no leaking? There
12 was no spills that you noticed or anything?

13 A No.

14 Q And what -- what area of the yard did that happen?
15 Again around --

16 A Let's see here. 14 car -- okay, Track 14 in the
17 receiving yard. It would be about -- should I put
18 a "4" on there?

19 Q Yes, please.

20 A Okay.

21 Q Thank you.

22 Now, each of these reports concerns incidents
23 that took place in 1991 and 1992?

24 A Yes, sir.

25 Q To your knowledge, and your own personal knowledge,

1 were there other incidents of damage to cars that
2 contained hazardous materials prior to that?

3 A None that I -- none that stick in my mind. None
4 that I'm aware of.

5 Q In your experience with -- with the railroad,
6 have there been any incidents where there were
7 damages -- damage to cars; tank cars, for example,
8 that previously had contained or still contained
9 hazardous materials that were repaired in your --
10 in the yard, that you know of? That you know of
11 that you worked on?

12 A Not that came to my notice, no, sir.

13 Q I take it if a tank car was damaged and there was
14 some spillage or something of that nature, an
15 outside company would be called to empty the tank?
16 Is that the procedure?

17 A I would expect it to be -- I wouldn't be the one to
18 call the outside company. I would expect -- I
19 would expect that to happen, yes, to transfer the
20 load.

21 Q Now, these reports, are they typical of reports
22 that would have been made prior to you -- if you
23 know, prior to your taking the job as claims
24 prevention manager?

25 A Could I clarify one thing?

1 These aren't really reports. These are
2 merely information I filed for my own use, and I
3 did send some pictures on but.

4 Q But these are not official?

5 A Not really reports.

6 Q Okay. But there would have been official reports;
7 would there not, by the person that noticed an
8 incident or a spillage?

9 A Say -- pardon me.

10 Say that again, please.

11 Q If somebody noticed an accident or a spillage or a
12 leak in a car, they would make a report?

13 A I would expect them to.

14 Q Either the conductor of the train or --

15 A I would --

16 Q (Continuing) -- an engineer?

17 A I would expect them to, yes, sir.

18 Q Who did these reports go to? Can you give me the
19 ladder that they take?

20 I mean, it starts with the person that finds
21 it, and who does he give it to?

22 A Of mine?

23 Q In --

24 MR. ERMILIO: Excuse me.

25 BY MR. RUVOLO:

1 Q (Continuing) In your knowledge of the operation of
2 the job -- of the yard?

3 MR. ERMILIO: When you say "reports,"
4 are you talking about the Unusual Occurrence
5 Reports that are the exhibits?

6 MR. RUVOLO: I'm talking -- I'm not
7 talking about these exhibits, per se. I'm
8 talking in general.

9 MR. ERMILIO: In general, you said,
10 "these reports." I don't understand your
11 reference.

12 BY MR. RUVOLO:

13 Q In general, I would assume that if an incident
14 occurred, a report would be made beginning with the
15 person that found the --

16 A Well --

17 Q (Continuing) -- damage?

18 A The progression. I would expect the conductor or
19 whoever discovered it -- well, it may be someone
20 from a different -- any department. It could be a
21 conductor. It could be a Car Department employee.
22 It could be a Track Department, any department.

23 I would expect them to tell their supervisor
24 of whatever department it was.

25 Q Okay.

1 A If it was the conductor, it would be the yardmaster
2 or trainmaster.

3 Q What I'm driving at, is there any central point
4 where these reports would all go?

5 A I don't know. Not -- not that I'm aware of.

6 MR. RUVOLO: Would this be a good time
7 to take a break?

8 Why don't we take a ten minute break.

9 MR. CUNNINGHAM: Fine.

10 MR. RUVOLO: Okay. I don't have much
11 more.

12 (Whereupon a short recess was taken.)

13 BY MR. RUVOLO:

14 Q Just a few more questions, and this will be it for
15 me.

16 Okay, a report comes in or a car is damaged
17 and some freight is lost or cargo. Who gets the
18 report, ultimately?

19 Who's the one that has to settle or make
20 payment or get payment from the -- for the damage?

21 A Do you mean after the car goes to the consignee?

22 Q Yeah.

23 A Okay. First the consignee gets a car with loss or
24 damage, and they report that. I go to the
25 location; and I confirm the damage, try to find out

1 the cause, make a report; and one copy -- one copy
2 goes to the consignee; and the rest of it goes to
3 my supervisor, Al Weber, in Indianapolis.

4 Q Okay. What's his official title?

5 A I'm not sure. I think he's an assistant director
6 or something like that. I -- his title is not
7 supervisor.

8 Q Okay.

9 A I'm not sure what his title is.

10 Q But he's in Indianapolis?

11 A Indianapolis, yes.

12 Q Okay. And has that always been so while you were
13 with the Claims Department?

14 A Yes, yes.

15 At that location now, I believe they enter --
16 somehow they enter the -- the information in the
17 computers, and I don't -- I haven't ever been there
18 to see them do this. And I don't know what the
19 disposition of the report -- whether they keep it
20 there or whether it's sent on to Philadelphia. I
21 don't know. Or Buffalo, Freight -- Freight
22 Recovery. Buffalo it may be. I don't know who
23 gets it from then.

24 Q Freight Recovery is in Buffalo?

25 A We call it Freight Recovery Department in Buffalo

1 or office, Freight Recovery Office in Buffalo.

2 Q And what do they do, basically?

3 A They process claims, losses and claims and things.

4 And I'm not sure if they get all the -- all the
5 reports or just a portion of them.

6 Q How about places like Dearborn or Philadelphia?

7 Would they get -- to your knowledge, would they get
8 the -- would it be the responsibility from Weber in
9 Indianapolis or somebody in Buffalo to notify
10 Philadelphia?

11 A Well, Dearborn, Chicago -- normally they would
12 generate reports, and normally the reports wouldn't
13 go to them. And, the central office is in -- is in
14 Philadelphia. Damage Prevention and Claims
15 Services is Philadelphia, and Freight Recovery is
16 in Buffalo.

17 But other locations would generate reports
18 for them. Nothing goes to them that I know of.

19 Q So if there was an incident in Chicago, it would go
20 to Dearborn. Dearborn would send it on to
21 Indianapolis or Buffalo, as the case may be?

22 A I would guess, yes.

23 Q And if it was all over, something -- same thing
24 would happen. But as far as Elkhart was concerned
25 during your tenure, it would go down to

1 Indianapolis or Buffalo?

2 A Yes, sir. I direct it to Indianapolis and let them
3 distribute the report then.

4 Q During your tenure with the Claims Department, can
5 you give us an idea of how many claims were made
6 over a course of, say, a year, on average?

7 A Of all sorts?

8 Q For freight or loss of freight or damage?

9 A My guess might be from 2 to 400 per year now. I
10 don't always make reports on -- on incidents.
11 These three that I show here, I made no report out
12 on these. This is more like advice.

13 Q Right.

14 A But, I'll say maybe a couple hundred a year.

15 Q Okay. Would you happen to know of a name up in
16 Buffalo of somebody that would be in charge?

17 A No, I don't. No.

18 Q Okay.

19 Now, roughly, you're telling us that you have
20 been with the railroad since the mid 50's to this
21 date. Is that correct?

22 A 1948.

23 Q '48.

24 I'm trying to think of how to phrase this
25 best. But, to your knowledge, your own personal

1 knowledge, during that period or at any time during
2 that period -- I mean, you can break it down
3 whichever way you choose -- were there incidents
4 involving the spillage of hazardous materials or a
5 leakage of hazardous materials?

6 Whether or not you prepared a report on it or
7 not; but to your knowledge, your own knowledge,
8 were there incidents?

9 A None that I've seen or been a part of, no, sir.

10 Q Now, the definition of hazardous materials is
11 fairly recent in many instances; and it's being
12 added to and so on. As a result of the
13 regulations, some products are not used anymore;
14 but at the time they were used, they were -- they
15 were considered to be safe; and you're -- you're
16 aware of that.

17 During your tenure with the railroad at any
18 time were you aware of the usage of cleaners such
19 as carbon tetrachloride?

20 As you know, it was used in dry-cleaning.

21 You're shaking your head, but she has to have
22 an answer.

23 A Pardon me.

24 I'm aware -- I'm familiar with carbon
25 tetrachloride, but I have not -- I don't know of

1 any usage. I've never heard of it being used.

2 Q Do you know of any cleaners that were used?

3 A Cleaners?

4 Q For either electrical cleaning or for grease
5 cleaning?

6 A Well, when I was at the storehouse, some of the
7 materials we handled, I saw spray cans of
8 electrical cleaner, little spray cans, aerosol
9 cans.

10 Q And that would be what period of time?

11 A '84 to '89. 1984 to 1989.

12 Q Do you remember what the name of the cleaner was
13 or?

14 A No. All I can recollect is "electrical cleaner" on
15 the spray can.

16 Q Okay.

17 In receiving and distributing any materials
18 for the -- for the yard, did you receive any
19 degreasers or cleaners or chemicals that might be
20 used?

21 A Not that I recall. None that I -- none that comes
22 to mind right now.

23 Q To your knowledge, were there procedures that are
24 being followed today in the Freight Claims
25 Department -- were they being followed prior to

1 your getting there?

2 A As far as I know. I don't know of any changes come
3 about. I don't know of any.

4 Q It's generally been a training and a program that
5 people would move into and continue on?

6 A Yes.

7 Q Basically?

8 Other than the advent of the computer and
9 things of that nature?

10 A Yeah.

11 Q I take it that you and your neighbors from Conrail
12 might carpool occasionally or associate socially?

13 A No.

14 Q No?

15 A No.

16 Q Away from work?

17 A We -- the yardmaster's retired. I work days, and
18 the conductor is -- works all different hours. We
19 never go to work at the same time, and we're not in
20 the same social set.

21 Q Do you have occasion to discuss with other members,
22 other employees of Conrail, incidents that may have
23 occurred such -- a major incident, something that
24 might make the newspapers or something of that
25 nature?

1 A You say, "Have -- have I had incidents?"

2 Not much. In passing, someone -- one of us
3 might remark to another one about an incident that
4 happened yesterday or last night or something but
5 only in passing.

6 Q There were a couple of incidents, for example, one
7 where a tank car leaked and there were vapors of --
8 I think it was hydrochloride where the fire
9 department was called and --

10 A I remember that.

11 Q (Continuing) -- the whole town was alerted.

12 I mean, wouldn't that be discussed among you
13 guys?

14 A It -- I forget. That's been some years ago, and I
15 don't remember what job I was working at the time;
16 but at my work location, it didn't affect me. I
17 remember a part of the town was evacuated, and I'm
18 not even sure what the incident was.

19 Was it something vented?

20 A tank car vented, I think.

21 Q I believe.

22 A Vented something, and we may have mentioned it in
23 passing, but there was no -- no discussion.

24 Q Were there any programs that you went through
25 during your career with Conrail or Penn Central in

1 the way of -- I mean, when I talk programs, I'm
2 talking about seminars or courses that dealt with,
3 say, hazardous materials or waste disposal or
4 accident reports or something of that nature?

5 A I don't believe there have been, no.

6 Q You were not involved in any way with a particular
7 training program, organized training program?

8 A No.

9 Q Just a couple final ones.

10 In the Claims Department during your time
11 there, to your knowledge, were there any -- were
12 there many claims or were there any claims made by
13 a consignee to the railroad to the effect that a
14 shipment was received empty when it started out
15 full?

16 A After what?

17 Q It started out full? Full tank car and then when
18 it got to its place it was empty?

19 A Not tank car. I've had numerous cases of crushed
20 limestone lost. I -- I recall one time I had a
21 load of fertilizer that had a loss, but I don't
22 recall any tank cars.

23 Q Were you able to trace the loss?

24 A About the best I could do was to find the -- the
25 cause of the loss. There was a hole or a vent left.

1 open or something like that, but not where I
2 couldn't identify what happened.

3 Q Were there any instances of where a -- a car was
4 listed as empty that arrived, and it wasn't empty?

5 A The only thing that comes to mind now is I had a
6 load of taconite that was supposedly an empty car,
7 and the taconite was so heavy it didn't take up
8 much space in the car, and it looked empty.

9 Q How do you spell taconite?

10 A T-a-c-o-n-i-t.

11 That's little pellets of iron -- enriched
12 iron ore. There was a big hopper about 10 feet
13 high, and I -- I think the load was about 3 feet
14 deep in the bottom of the car. It looked empty, so
15 it was moving as an empty. And that's the only one
16 that comes to mind right now.

17 Q And when would that have been?

18 A That's been some years -- possibly -- probably ten
19 years ago.

20 Q Roughly the early 80's?

21 A Yeah.

22 MR. RUVOLO: Okay. I have no further
23 questions.

24 MR. CUNNINGHAM: Do you want me to sit
25 over there?

1 Would it be easier for me -- for you to
2 hear there?

3 THE WITNESS: I can -- I can hear you
4 over here.

5 MR. CUNNINGHAM: All right?

6 THE WITNESS: You're doing okay, yes,
7 sir.

8 CROSS EXAMINATION

9 BY MR. CUNNINGHAM:

10 Q I don't have too many questions, but let me
11 introduce myself. I'm Mr. Cunningham. I represent
12 Penn Central Corporation, who happened to be one of
13 your employers at one time during your career as a
14 railroader.

15 So if there's any question you don't
16 understand or you can't hear, just let me know; and
17 I'll try to make it audibly clear and, hopefully,
18 intellectually clear.

19 A Okay.

20 Q You are, vindicated by your testimony, a long time
21 railroad employee at Elkhart having worked for, as
22 I understand it, first the New York Central Railway
23 which became Penn Central which became Conrail?

24 A That's right.

25 Q Is that right?

1 A Yes.

2 Q It's my understanding you've worked for all three
3 of those entities.

4 A That's right.

5 Q Is that correct?

6 A That's right.

7 Q I want to ask you some questions that are first
8 specific and then some that are general in nature,
9 so, again, if you have any questions about the
10 question, let me know.

11 First, do you know a Mr. Claude Brewton?

12 A Yes, I used to work with Claude Brewton.

13 Q And have you had any discussions with him about
14 this case?

15 A No, I haven't seen Claude in years. It's been many
16 years, ten years or more.

17 Q When did you work with Mr. Brewton and in what
18 connection?

19 A It's about 30 years ago. Sometime, I -- I would
20 guess early 60's Claude was a clerk, a yard clerk
21 out there.

22 Q Okay.

23 A And it may have been more than 30 years ago, but we
24 worked together in the office.

25 Q He was a clerk and you were a clerk at that same

1 time?

2 A That's right.

3 Q Do you recall having heard from him about a spill
4 of carbon tetrachloride which occurred between the
5 years 1966 and 1970 on Track 69 that involved a
6 derailment of a tank car and damage to that tank
7 car? Do you recall any such discussion?

8 A I don't recall that.

9 Q Okay. Do you know anything about that?

10 A No. All I can say is it didn't impress itself on
11 my memory if that happened. It is not something I
12 remember.

13 Q Do you know a Mr. Ted Berkshire?

14 A I know the name, but I don't know the individual.
15 I don't know the man.

16 Q Do you know any of the procedures involved in
17 the -- off the record.

18 (Discussion held off the record.)

19 Q (Continuing) -- Car Shop involving the cleaning
20 off of the concrete slab which apparently is there?

21 A The only thing I'm aware of the cleaning of the
22 concrete slab at the Car Shop is they have a
23 sweeper, and I've seen it swept. It looks like a
24 little miniature street sweeper with the roll --

25 Q All right.

1 A (Continuing) -- and the brush, and I've seen that
2 used, and that's the only thing I'm aware of that
3 they used to clean that with.

4 Q I take it you were not familiar with the
5 procedures, then, that are used to clean that other
6 than the sweeper?

7 A No, that's right.

8 Q So your -- your knowledge of that is limited to
9 merely the sweeping operation, not the materials
10 that may or may not go in the cleaning of the slab.
11 Is that right?

12 A That's right. I have seen water used too.

13 Q All right.

14 A I have seen it hosed down.

15 Q All right.

16 A And that's all I can remember seeing.

17 Q Let's talk for a minute, if we can, about the
18 derailment situations involving tank cars that also
19 involve damage to the tank cars and loss of lading.

20 As a member of the Department of Loss
21 Prevention, where there is a damage to a tank car
22 and loss of lading in your present position, you
23 would be involved in some way in that incident at
24 Elkhart. Is that correct? In that situation at
25 Elkhart?

1 A It is better to say I should be involved.

2 Q All right. Or you might be involved?

3 A I -- I would expect -- I would hope to be involved
4 with it, yes, sir.

5 Q All right. So, in the incident that I described to
6 you as being something Mr. Brewton recalled;
7 namely, the spillage of certain commodities, which
8 in this case happened to be hazardous, the damage
9 to the tank car and the loss of the material,
10 presently then you would be involved in such a
11 situation. Is that right?

12 A I would expect to be.

13 Q Okay. Now --

14 A I would expect to be.

15 Q That would be today's scenario, correct?

16 A Yes.

17 Q 1965 to 1970 you were then employed by Penn
18 Central, as I recall?

19 A New York Central in 1968, and then Penn Central
20 after that.

21 Q All right. In that time period, was there some
22 method of recording damage to tank cars, loss of
23 hazardous materials, in a scenario such as we have
24 just described, to your knowledge?

25 A I don't know what procedures -- what -- what the --

1 what went on then --

2 Q All right.

3 A (Continuing) -- in regards to that.

4 Q Okay. Do you have any idea whether or not those
5 procedures that are now in place; namely, details
6 contained in what has been marked as Exhibits 1, 2
7 and 3; would have existed at that time, 1965 to
8 1970?

9 A Now, during those years I don't think it was
10 possible to request a hazardous material
11 description. I don't think that capability was in
12 the computer then.

13 Q All right. Do you believe there was some recording
14 of some information in those kinds of cases?

15 A I really can't say. It would really be
16 speculation. I -- I wasn't --

17 Q All right. I don't want you to speculate.

18 A I really wasn't close to that, yeah.

19 Q What you're telling me is you don't know?

20 A That's right.

21 Q Okay. Is there someone that you can recall during
22 the time that I'm talking about at Elkhart that
23 probably would have known of this or been
24 responsible for reporting such an incident?

25 A I would expect the terminal trainmaster at the

1 time, whoever it may have been at the time.

2 Q Okay. Do you know who that was at that time?

3 A No, they don't last too long. There's none --

4 Q Turnover is great, then, on that job?

5 A There's none presently working that were working
6 then that I'm -- that I'm aware of, that I know of.

7 Q Now, tell me. The trainmaster is someone in that
8 time period that probably would have received the
9 information. Is that right?

10 A I would expect that to happen, yes.

11 Q Are you telling me that at that time, to your
12 knowledge, there was no department such as you are
13 now in?

14 A I think at that time the work that I do was done by
15 someone in the Stations Department, maybe a chief
16 clerk or someone working under him in the Stations
17 Department.

18 Q And at Elkhart there was a Station Department?

19 A Yes, there was.

20 Q And that department is now the department you're
21 in?

22 Or does it still exist at Elkhart?

23 A It still exists -- pardon me. Let me think for a
24 minute now.

25 Stations Department exists, but there -- at

1 that time the Stations Department was under the
2 freight agent. Today there's no longer a freight
3 agent.

4 Q Okay. What department superseded the Freight
5 Department?

6 A Freight stations or?

7 Q Yes.

8 Was that the name?

9 A Well, years ago they called it the agency. It was
10 the agency. The freight agent and his department
11 was --

12 Q Well, let's take it through its progression.

13 First, the Agent's Department, then the
14 freight -- Freight agent?

15 A Freight agent, and -- I wasn't in the department at
16 that time, and I'm not real familiar with it then.

17 Q All right. So you really don't know the history?

18 A In years later it was the Stations Department,
19 though.

20 Q Stations Department, and that no longer exists?

21 A There's a Stations Department there.

22 Q And what did the Stations Department do?

23 A Well, they were involved with billing. Mostly
24 billing of both inbound and outbound shipping and
25 receiving and.

1 Q So that department may -- may have the information
2 that I am seeking?

3 A Possibly.

4 Q Well, let's get back to the trainmaster again.

5 Independently, the trainmaster would have
6 gotten such a report. Is that correct?

7 A I would look for him to now.

8 Q That would be probably what happened. Is that
9 right?

10 A Yeah, yeah.

11 Q And is the trainmaster different in that time
12 period than the terminal superintendent?

13 A Trainmaster worked under the terminal
14 superintendent.

15 Q Would -- would the terminal superintendent also
16 have gotten such a report?

17 A I would expect him to.

18 Q Okay.

19 A I would expect him to.

20 Q Again, during the period 1966 to 1970, do you
21 recall any of the terminal superintendents or
22 trainmasters from your own knowledge?

23 A Names?

24 Q Names.

25 A I don't remember right now who was there.

1 Q All right. Do you know a Jim Page?

2 A Oh, yes, yes.

3 Q Was he a terminal superintendent?

4 A He was a terminal superintendent in the -- he was
5 the terminal superintendent in 1958, and when the
6 yard opened -- the new yard opened in 1958. After
7 a year or two, Page left, and he came back sometime
8 in the mid 60's.

9 Q Again as superintendent?

10 A As terminal superintendent again.

11 Q And do you know where he is now?

12 A I -- I have a hunch that he's dead.

13 Q Do you know anybody that knew him that's still
14 living?

15 A There are employees who were working then when Jim
16 Page was there.

17 Q And who are some of them?

18 A Well, let's see. Some of the clerks. Frank Lenox
19 and --

20 Q Is he still employed by Conrail?

21 A Yes. These are people still employed.

22 MR. ERMILIO: We took his deposition.

23 MR. CUNNINGHAM: Yeah, okay.

24 A Do you want me to restrict it to people still
25 employed?

1 Q How about anybody you know?

2 That would be very helpful.

3 A Oh, I can name quite a few then.

4 Q You knew Page?

5 A Uh huh, yes.

6 Q Just give me some -- a few names.

7 A The three Struck -- Stuck brothers; Dwayne Stuck,
8 Leon Stuck and Lowell Stuck were working then.

9 Q Are they still with Conrail?

10 A No, they're all three retired.

11 Q Are they here in Elkhart?

12 A They live up in the Union, Michigan area, within
13 ten miles of Elkhart.

14 Jerry Bushong is retired, living in Elkhart.
15 These are clerks.

16 Q That's fine.

17 Now, what about trainmasters? You say you
18 don't recall any of the trainmasters during the mid
19 60's?

20 A Bill Gleason was a trainmaster during those years.
21 Bill is dead. Some of these people that I know of,
22 I don't know exactly when their tour of duty was,
23 when they were trainmasters. I'm thinking Dallas
24 Hann and David Garman -- David Garman. They were
25 trainmasters, but I'm not sure exactly what period

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1 A I'd look for that to happen, yes.

2 Q All right. And your job, as I understand it, is to
3 merely investigate?

4 I shouldn't say merely. It's to investigate
5 and to verify losses that have occurred. Is that
6 right?

7 A Loss -- verify loss or damage and find the cause of
8 the loss or damage and try to prevent it from
9 happening again.

10 Q Okay. I assume that sometimes there are those
11 consignees out there who attempt to make claims
12 that aren't valid. Is that right?

13 And its your job to try and prevent --

14 A Yes.

15 Q (Continuing) -- such fraud, if it is?

16 A It's possible, but I'm -- I'm pretty insulated
17 against that. I make my report out, and I hear no
18 more about the report.

19 Q Okay, I understand.

20 You don't pay the claim. That's Buffalo,
21 right?

22 A I'm -- I'm not sure if Buffalo -- I think Buffalo
23 does probably.

24 Q But you investigate it. You're like a claim
25 adjustor?

1 A I'm not an adjustor. I don't -- I don't talk
2 money.

3 Q You're an investigator?

4 A Yeah.

5 Q Is that right?

6 A Inspector.

7 Q Inspector.

8 Okay, so you just go out and look at what's
9 there and report it back?

10 A Report what I have discovered, and then I never
11 hear anymore of it then.

12 Q One thing that's puzzled me sometimes is this.
13 Let's assume that a shipment from Chicago is going
14 through Elkhart to the east somehow, and when it's
15 in Chicago it may have been filled up with
16 materials.

17 How can you verify that cars that are
18 supposed to be filled are, in fact, filled when
19 they come into Elkhart?

20 And maybe this will help you if I ask this
21 question. The reason I'm saying that is -- well --
22 well, let's go back and answer that question first.

23 A Normally, we don't verify that they're filled; but
24 if the question arose, I would go to the origin and
25 see if there's a scale weight, see if they were

1 weighed -- if the car was weighed. And that would
2 tell me what was on there at the origin.

3 Q All right. So that what could happen, since you
4 don't verify contents of the tank car in Elkhart,
5 is that the material could be lost in transit,
6 arrive at Elkhart; and the consignee in Cleveland,
7 let's say, headed east would say that it was lost;
8 and you wouldn't know whether it was lost in
9 Elkhart or where it was lost, right?

10 A That's -- that's -- that's a good description.

11 Q Okay. Do you -- are you familiar with a form
12 CT-1204?

13 A Yes, sir. That's my report.

14 Q Is that this; Exhibits 1, 2 and 3?

15 A No. There's no 1204's here.

16 Q Okay. And where -- tell me about the 1204's and
17 how they differ from what we see here today?

18 A Okay. A 1204 is a regular form. If a consignee
19 notifies us of loss or damage, I will make an
20 inspection and verify, try to find the cause and
21 then fill out the form, the 1204 form. And the
22 consignee would get a -- which would include a
23 description of the commodity and a legend giving
24 any incident information about that.

25 And the consignee would get one copy, and

1 the -- the originals, the rest would go to my
2 supervisor in Indianapolis, Mr. Weber.

3 Q Your supervisor would be Mr. Gallas?

4 A No, Al Weber.

5 Q Al Weber, okay.

6 A In Indianapolis.

7 Q All right. So Indianapolis gets the original, and
8 you keep a copy?

9 A I keep a -- yes, I do.

10 Q All right. And with respect to the 1204, do you
11 know in Indianapolis whether they put that on the
12 computer?

13 A I have heard that they do. I believe they do.

14 Q Do you know, based on your experience with the
15 railroad, when the computer system began in
16 Elkhart?

17 A Well, it was -- it evolved. During the 60's it --
18 it first started out with merely a Teletype --
19 merely a Teletype transmission from one terminal to
20 the next, and that's all before the computer was
21 involved, and then it was a Teletype transmission
22 into the computer, and the computer transmitted.

23 Q All right. And when did that take place, the
24 second situation that you're talking about?

25 A The early 60's. Mid to early 60's.

1 Q Do you use the computer, yourself?

2 A Yes, I do.

3 Q And what do you use it for?

4 A I draw -- I pull information from it.

5 Q What kind of information?

6 A Well, I can pull -- pull a record of a car history;
7 which tells me where the car's been, where it's
8 going and where it is now. And I can ask for a
9 hazardous description if I need that, and I can --
10 I can pull the Unusual Occurrences Report.

11 And part of my job entails the vehicles;
12 automobiles, vans and trucks. I can pull
13 inspection reports on them if they've been
14 inspected and what the results have been. And --
15 and we had the electronic message system through
16 the computer too.

17 Q And what's that?

18 A We send messages to various co-workers. It's an
19 electronic mail system.

20 Q All right. That's anyplace on the system?

21 A Yes.

22 Q You want something to go to Philadelphia, you send
23 a message through?

24 A I can do that.

25 Q Let me ask you this. Let's say I want to know or

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1 A TRIMS is for the Automotive Department, and that's
2 merely a subset of the whole computer system.

3 Q So it's only part of it?

4 A Yes. Oh, definitely, yeah.

5 Q All right. Let's -- let's talk about the other
6 computer systems and what they're called. Do you
7 know what that is?

8 A I don't know what it's called, sir.

9 Q But you have terminals that you have access to at
10 Elkhart?

11 A Yes, I do.

12 Q And is there any code to get into it or anything
13 that you know of?

14 A Well, when I walk -- when I sit down at the
15 terminal, there's a menu with about maybe 25 or 30
16 choices; and I can get into several of them, maybe
17 three or four or five, and all except one I need
18 a -- my identification and my password to get in.

19 Q What kind of menus are those?

20 A Oh, one is for timekeepers to put the payroll in.

21 Q Well, I'm more interested, as you know, in
22 hazardous spills.

23 What would that be?

24 A Well, there is one part of the menu I can ask for a
25 hazardous commodity without using a password.

1 Anyone can do that. You could walk up without a
2 password and request a hazardous description.

3 Q And what would you get then?

4 A A -- a print-out as I had in one of these exhibits
5 here.

6 Q All right. This would be part of Exhibit No. 1?

7 A Part of Exhibit No. 1.

8 Q Which page?

9 A 1, 2, 3, 4 -- Page 5 that -- I have photographs
10 stapled to it here.

11 Q All right. Okay.

12 And so, you would be able to generate that?

13 A Yes.

14 MR. ERMILIO: I believe he's referring
15 to what is Page 6 of the exhibit.

16 Q And that's -- that describes the environmentally
17 hazardous substance, as well as other factors?

18 A The request here is -- I entered the railcar
19 number. That's all I entered, and it generated
20 this from the railcar number.

21 Q Okay. Then, could someone in Philadelphia do the
22 same thing?

23 A I'm fairly certain they could.

24 Q You indicated that a yardmaster lives on your
25 block. What's his name?

1 A Delmar Ethell. First name, Delmar, and I'm not
2 sure how you spell Ethell. E-t-h-e-l-l, I think.

3 Q And he's in Elkhart now?

4 A Yes.

5 Q And how long has he been a trackmaster or
6 yardmaster?

7 A Well, I would guess he was a yardmaster. He's
8 retired now.

9 Q All right.

10 A I would guess he was probably a yardmaster for 20
11 years.

12 Q And as a yardmaster, what was his responsibility?

13 A He's in charge of the trains and engines and the
14 crews working in the yard and the making up of
15 trains.

16 Q So he wouldn't be connected, really, with any
17 hazardous material problems, right?

18 A I'm not sure what you mean by connected.

19 Q Well, would he have any responsibilities if there
20 was a spill in reporting or otherwise?

21 A I don't know about reporting, but he'd be
22 responsible for -- for the safety of the people
23 working out there.

24 Q Okay. And has he ever talked with you about any
25 spills that occurred?

1 A No.

2 Q That you can recall?

3 A No.

4 Q Now, you indicated that the consignee, I believe,
5 gets a copy of your report.

6 Does the shipper also get a copy?

7 A Not unless a consignee sends him one.

8 Q Do you deal at all with the insurance adjustors, or
9 does another department handle that?

10 A No, I don't deal with that.

11 Q Okay. Do you deal with Weber frequently in
12 Indianapolis?

13 A I speak with him about every day, yes, sir.

14 Q Do you have any knowledge, Mr. Stokely, as to once
15 Indianapolis gets the information that you give
16 them what they do with it?

17 A I suspect they keep a copy for themselves and then
18 mail the originals on to the appropriate office,
19 the appropriate place.

20 Q That would be probably Buffalo and Philadelphia?

21 A I know for sure Buffalo gets some. I've spoken
22 with Buffalo. They've had my original there in
23 front of them.

24 Q Okay. Why does Buffalo get that? Because they're
25 the Claim Department?

1 A That's Freight Recovery. I'm not sure if they
2 process all of the -- all of the reports or only a
3 part of them. I don't know what the thing is
4 there.

5 Q Does Buffalo often call you and ask questions about
6 what you really saw or more detail that may be
7 needed?

8 A Very seldom. Just a few times a year.

9 Q And is that generally the nature of their calls, to
10 find out more?

11 A Yes.

12 Q Okay.

13 A Yes.

14 Q They're then at that point, I take it, confronted
15 with a claim; and they want to know more as to
16 whether this is true or not?

17 A I think they probably don't call unless they get a
18 claim in from the consignee, yes.

19 Q Do you know a C. A. Wendling?

20 A Oh, yes. He's a -- he's an official in my
21 department in Dearborn, Michigan.

22 Q Do you have any dealings with him?

23 A I talk with him several times a week usually.

24 Q And in what connection do you talk to him.

25 A My dealings with Dearborn have to do with the

1 automotive business we have.

2 Q All right.

3 A We get Ford and Chevy vans and trucks in and ship
4 out van conversions and military vehicles, and
5 that's the part of my job that concerns Dearborn.

6 Q Okay. What about Philadelphia? Have any dealings
7 with Mr. Van --

8 A Mister who?

9 Q (Continuing) -- Keran? Van Keran?

10 A Van Keran?

11 Not directly. He's a name to me. I've --

12 Q Okay.

13 A I've never dealt directly with him.

14 Q He's in the chain of command?

15 A Yes.

16 Q For your department?

17 A Yes.

18 Q J. A. Woodward? Does that mean anything to you?

19 A He's another -- I've spoken with a time or two, but
20 normally I don't -- I don't talk with him.

21 Q Again, he's Philadelphia, right?

22 A Yes.

23 Q Well, I wonder if you could get me just a blank
24 copy of a 1204 form -- CT-104 and give it to
25 Mr. Ermilio?

1 A I could do that, yes.

2 Q I take it that the hazardous substance losses of
3 cargo are treated differently according to
4 Mr. Gallos than -- than the non-hazardous substance
5 losses. Is that right?

6 A Perhaps at a different level but not -- not at my
7 level.

8 Q Not at your level?

9 A Not at my level.

10 Q In other words, if you go out and find a carbon tet
11 loss, you report it the same way?

12 A I'd make the same type of report out. If I felt
13 there was any danger, I might notify people that I
14 wouldn't notify with a loss of limestone or
15 something like that. I would -- I would make sure
16 authorities were notified.

17 Q Okay. And the type of report that you would fill
18 out would be as you have shown us here; Exhibits 1,
19 2 and 3?

20 A These aren't reports. I don't consider these
21 reports.

22 Q These are for your own information?

23 A These are file copies in case a question ever comes
24 up on these -- on these incidents here.

25 Q All right. But the 1204's are official reports.

1 Is that right?

2 A Yes, that's right.

3 Q And the 1204's differ from these in what way?

4 A Well, it's a preprinted form; and it will give -- I
5 use one page per railcar, per car. If there's two
6 or three or four cars, I have two or three or four
7 1204's I'll fill out.

8 And they're preprinted and give the origin
9 information, destination information, information
10 on the damage, on the lading and everything that --
11 hopefully, everything that the company needs to --
12 to discuss a claim.

13 Q It's more of a summary than what you have, perhaps?

14 A That -- that could be, yes.

15 Q All right. The 1204, I think you've testified you
16 keep a copy. One goes to Indianapolis, and the
17 1204 does not have, according to Mr. Gallos, to my
18 recollection, any hazardous designation.

19 That's a different form, apparently?

20 A There's a place in the 1204 for the stick code
21 number, which investigation would show that it's a
22 hazardous commodity.

23 Q Right.

24 A Aside from that, no.

25 Q What about wreck files? Have you ever heard of

1 those?

2 A Yes.

3 Q Is that what you have here; Exhibits 1, 2 and 3?

4 Is that a wreck file?

5 A No. I don't handle wreck files.

6 Q Who does that?

7 A I don't know where the origin comes from, whether
8 the origin comes from Indianapolis or maybe from
9 Philadelphia, but I have been told to include the
10 wreck file numbers on information that I make
11 out -- "Include this wreck file number," but where
12 that number comes from, I don't know.

13 Q Wreck files are -- you don't have any knowledge
14 about wreck files. Is that right?

15 A Not firsthand knowledge, no, sir.

16 Q What about derailments? Do they require, to your
17 knowledge, creation of a wreck file?

18 A I would expect it to.

19 Q And someone else in Elkhart handles that?

20 A I don't think it would be Elkhart.

21 Q Probably Chicago?

22 A More likely Indianapolis or Philadelphia.

23 Q So, if we want to find that out, we ask them?

24 A I wouldn't expect Chicago to have anything like
25 that.

1 MR. CUNNINGHAM: Anything else?

2 I think that's all. I appreciate your
3 help. Thank you.

4 MR. ERMILIO: Do you have any questions?

5 MR. RUVOLO: Just a couple.

6 REDIRECT EXAMINATION

7 BY MR. RUVOLO:

8 Q You said your position is freight claims and
9 Prevention Department?

10 A Well, the department --

11 Q Yeah.

12 A (Continuing) -- is Damage Prevention and Freight
13 Claims. Damage Prevention and Claim Services.

14 Pardon me.

15 Q What is the -- what are the preventive aspects of
16 the job? What is -- what is that?

17 A If I see practices of loading where something is
18 loaded in such a way that the lading is not
19 secured, what I've done before is I tell my
20 supervisor, Al Weber, and make -- have suitable
21 photographs made; and Mr. Weber will write to the
22 shipper and try to spell out the proper way to load
23 something. That's one part of it.

24 Q In answer to Mr. Cunningham, you said that if a car
25 came to the consignee and it was empty but had left

1 Chicago loaded, one of the things you would do
2 would be check it's weight when it was in Chicago?

3 A Yes.

4 Q Is it weighed again when it arrives in Elkhart?

5 A Not unless an alert is put on to weigh the car.
6 It's normally -- no. It could be, though.

7 Q And if it was headed for Cleveland, it would then
8 be weighed in Cleveland, I take it?

9 A Well, not necessarily.

10 Q Not necessarily.

11 A Normally it's weighed at the origin, and that
12 weight stands.

13 Q I'm trying to figure out how that verifies the
14 consignees claim that he's lost goods if you don't
15 know what it weighed when it got there -- it got
16 there or they got there.

17 A Well, one example is -- if I could just give an
18 example.

19 Q Please do.

20 A We have a consignee that receives crushed stone,
21 open-top hoppers with crushed stones at Elkhart;
22 and it's not unheard of for him to call and say
23 there's -- "This car's half empty here, lost a good
24 deal of the stone."

25 And I will look at it and verify that it --

1 it does look like it's lost some lading and then
2 order the car pulled and weighed before the
3 consignee unloads it. But he tells me before he
4 unloads it; and when I can weigh it, I can compare
5 that weight with the scale weight of when it was
6 shipped and then verify the loss that way.

7 Now, if you're asking for tank cars, I don't
8 know. I have not been involved with something like
9 that with a tank car loss.

10 Q Not in your experience?

11 A No.

12 Q Not in your tenure?

13 So that you have never received any claims,
14 for example, from -- strike that.

15 Would you also, as part of your
16 responsibilities, handle claims for damage to the
17 car rather than just the loss of a product?

18 A Only damage to the lading. Damage to the load, but
19 not damage to the car, itself.

20 Q Not to the car, itself?

21 A No.

22 Q So that if a tank car was damaged, it would go to
23 another department?

24 A If I was aware of it, I would look at it and see if
25 it looked like any lading was lost or could be